
From: Zelasko, Elizabeth (FTA)
To: Bausch, Carl (FTA); Ossi, Joseph (FTA); Matley, Ted (FTA)
CC: Grasty, Katie (FTA); VanWyk, Christopher (FTA)
Sent: 12/20/2010 1:11:00 PM
Subject: RE: Honolulu Rail Project

Charlene and Blythe are out of the office this week. I will send them an email anyway in case they are checking correspondence this week.

Elizabeth Zelasko
Federal Transit Administration

From: Bausch, Carl (FTA)
Sent: Monday, December 20, 2010 6:07 PM
To: Ossi, Joseph (FTA); Zelasko, Elizabeth (FTA); Matley, Ted (FTA)
Cc: Grasty, Katie (FTA); VanWyk, Christopher (FTA)
Subject: RE: Honolulu Rail Project

Agreed, Joe.

From: Ossi, Joseph (FTA)
Sent: Mon 12/20/2010 5:17 PM
To: Zelasko, Elizabeth (FTA); Matley, Ted (FTA)
Cc: Bausch, Carl (FTA); Grasty, Katie (FTA); VanWyk, Christopher (FTA)
Subject: RE: Honolulu Rail Project

1. I do not know if ACHP would be amenable to this approach – we haven't used it in the past to my knowledge, but I think that it may be our only hope. I think that we should ask ACHP about this approach.
2. FTA and the City should sign every copy that goes out for other signatures, and the FTA and City signatures should be on a page that includes some of the text of the agreement, not on a separate "signature" page.
3. We need only the signatures of the mandatory signatories (FTA, City, SHPO, ACHP, NPS, and Navy) before we sign the ROD. The invited signatories can sign or not sign, as they wish, and their signing can come after the ROD is executed.
4. We should have the statute of limitation notice ready for publication in the FR immediately upon FTA's signing the ROD.

Joe Ossi
FTA Office of Planning and Environment
(202) 366-1613

From: Zelasko, Elizabeth (FTA)
Sent: Monday, December 20, 2010 3:15 PM
To: Bausch, Carl (FTA); VanWyk, Christopher (FTA); Marler, Renee (FTA); Zusman, Nancy-Ellen (FTA)
Cc: Matley, Ted (FTA)
Subject: FW: Honolulu Rail Project

Redacted

From: Miyamoto, Faith [mailto:fmiyamoto@honolulu.gov]
Sent: Monday, December 20, 2010 3:03 PM
To: Zelasko, Elizabeth (FTA); Matley, Ted (FTA)
Cc: aranda@infraconsultllc.com; Zaref, Amy; Souki, Jesse K.
Subject: Honolulu Rail Project

Hi Liz and Ted –

See the following email for advice regarding counterpart execution of the PA. We have been discussing how we can expedite the execution process and will be making a recommendation shortly. If you would rather discuss by phone, let's schedule a time to talk.

Faith

From: Souki, Jesse K.
Sent: Friday, December 17, 2010 1:55 PM
To: Miyamoto, Faith
Cc: Takeuchi, Gary Y.
Subject: TRNS PA Counterparts Clause

Faith,

As we discussed, if FTA is considering allowing signature of the PA in counterparts, be sure FTA adds the following language to the end of the PA:

This agreement may be executed by the parties in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

A "counterparts" clause sets out that the parties may sign separate – **but identical** – paper copies and that this practice will constitute valid acceptance. The agreements provided to the parties for signature must be **identical**.

The first sentence of the above clause, allows several parties to sign one page (e.g., all signatories on one page) and/or separate pages (e.g., NTHP and HHF on one page, OIBC and Hui Malama on separate pages).

One way to avoid error is to keep all originals of the PA (each copy of the PA sent out for counterpart signature is considered an original) together in one place to be distributed to all the parties at the same time via post (paper copies mailed out via certified mail at the same time is best). Each party signs the document and sends the original signature page to you or Elizabeth (whoever is designated) by a date certain of your choosing.

Even though counterparts generally create an enforceable agreement it is best to have all of the signatures appearing on the same page on the same copy of the agreement, even if not all parties signed together at the same place and time. With that in mind, you may want to have at least the Signatories all sign the same page, and then attach counterparts for the non-essential parties to the PA.

The process I describe above is not unlike the process I used on land use transactions for millions of dollars with parties in California, New York and Hawaii—it should work for the PA. The only difference here is that the parties are less sophisticated, so you'll need to be sure they understand the process, which should be succinctly described in a cover letter accompanying the PA for their signature.

Please let me know if you'd like to discuss further. Feel free to share this email with Elizabeth for her and her counsel's consideration.

Sincerely,
Jesse K. Souki
Deputy Corporation Counsel
City and County of Honolulu

AR00090378

Ph: (808) 768-5135
Fax: (808) 768-1316

Happy Holidays! Please consider the environment before printing this email.

IMPORTANT/CONFIDENTIAL: This message may contain confidential and privileged information. If it has been sent to you in error, please reply to inform the sender of the error and then delete this message.